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ALEXANDER L. STEVAS,
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ANATOLY ARUTUNOFF, et al.,

Petitioners,

v.

THE OKLAHOMA STATE ELECTION BOARD, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITIONERS' REPLY BRIEF

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IN THE
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OCTOBER TERM, 1982

ANATOLY ARUTUNOFF, KATHIE M. LEE,
BEVERLY CHANSOLME, BOB MILLER,
TOM LAURENT, PAUL WOODARD, JIM SESSIONS,
THOMAS G. WINTER, DAN PHILLIPS,
LYNN CRUSSEL, AND GORDON MOBLEY,

Petitioners,

v.

THE OKLAHOMA STATE ELECTION BOARD,
GRACE HUDLIN, CHAIRMAN OF THE
OKLAHOMA STATE ELECTION BOARD;
DREW NEVILLE, VICE CHAIRMAN OF
THE OKLAHOMA STATE ELECTION BOARD;
AND LEE SLATER, SECRETARY OF THE
OKLAHOMA STATE ELECTION BOARD,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITIONERS' REPLY BRIEF

I. The Predominate Question Offered
For Review By The Petitioners
Presents A Case Or Controversy

**Within This Court's Jurisdiction
Under The United States Constitu-
tion, Art.III, §2, cl.1, Because
Oklahoma Statutes, Title 26, §
111 (Repealed January 1, 1975)
Did Not Require That A Political
Party In Oklahoma--Since The 1914
General Election--Receive At
Least 5 Percent Of The Vote At
The Last Preceding Election**

The Respondents make the claim on page 9 of their brief in opposition that Okla. Stat. Tit. 26, §111 (1971), repealed by 1974 Okla. Sess. Laws ch.153, §17-114, required a political party to ". . . receive at least 5 percent of the vote at the last preceding election, . . . " in addition to ". . . 10 percent of the vote [of the winning Presidential or Gubernatorial candidate] at either of the two last preceding elections." Therefore, the Respondents

conclude, there is no justiciable case or controversy within this Court's jurisdiction under the United States Constitution, Art. III, §2, cl.1, because the Libertarians failed to obtain 5 percent of the vote for President in Oklahoma in the 1980 General Election, and, thus, failed to meet the requirement of §111. The trouble with the above argument of Respondents is that it is based on a blatant misinterpretation of Okla. Stat. Tit. 26, §111 (Repealed 1975).

When read in its entirety, the aforesaid §111, except as to the General Election of 1914, never required 5 percent of the vote, but only 10 percent of the winning candidate's vote for Governor or President in only one of the past two General Elections. Such a conclusion can be borne out by considering the fate of the American Party in Oklahoma after the 1972

election. The American Party in Oklahoma received less than 5 percent of the vote for Governor in 1970, and yet was not removed from the Oklahoma ballot until after the 1972 election in which their candidate for President in Oklahoma received less than 5 percent of the vote. Oklahoma Election Board, Directory of Oklahoma for 1981 at 653 and 759. Under Respondents' reasoning the American Party should have lost its place on the ballot after the 1970 election, rather than after the 1972 election when the party failed for the second time in a row to get 10 percent of the winning candidate's vote.

Perhaps the definitive interpretation of the old §111 was provided by the Supreme Court of Oklahoma in the case of Craig v. Bond, 160 Okla. 34, 15 P.2d 1014 (Okla. 1932). In the Craig case the Court remark-

ed upon the fact that in 1930 the Socialist Party in Oklahoma was only removed from the ballot for the first time when it failed to meet the requirement of 10 percent of the winning candidate's vote in one of two successive elections.

Craig v. Bond, supra, at 1016. It should be further noted that the above result occurred only after the failure to meet the aforesaid two successive elections requirement, even though the Socialist Party in a number of previous elections failed to get 5 percent of the vote by obtaining one percent of the vote or less.

Oklahoma Election Board, Directory of Oklahoma for 1981 at 653, 696, and 704.

(Also see the dissenting opinion of Justice Riley in the case of Cooper v. Cartwright, 200 Okla. 456, 195 P.2d 290, 298 (1948)).

Therefore, under a proper interpre-

tation of Okla. Stat. Tit. 26, §111 (Repealed 1975), if §111 had been in effect in 1980, the Libertarian Party in Oklahoma would have had one more General Election in which to attempt to obtain 10 percent of the winning candidate's vote--in which case favorable relief from the Court would not be an advisory opinion, but would place the Libertarians back on the Oklahoma ballot as a recognized political party. Paradoxically, this is even the (forgotten) view of the Oklahoma Attorney General's Office:

A political party in the State of Oklahoma to remain a political party, must receive ten percent of the votes cast for the party receiving the highest number of votes in two general elections following each other involving the election of the President of the United States and the Governor of the State of Oklahoma. Specifically, the American Party must receive ten percent of the votes cast in the 1970 General Election for the Democratic nominee for the Office of Governor. . . or to have received ten percent of the votes cast for the Republican nominee for President of the United States in the 1972 election. Op.Atty.Gen. No. 72-289 (August 20, 1973).

II. The Decision In McLain v. Meier,
637 F.2d 1159 (8th Cir. 1980),
And Decisions Of This Court, Are
Contrary To The Decision In Ques-
tion Of The Tenth Circuit Court
Of Appeals As To The Use Of
Historical Election Experiences
And Data

Respondents fail totally in proposi-
tion II of their brief in opposition to
comment on the Tenth Circuit's failure to
discuss at all the historical election ex-
periences and data as to the issues of the
case at bar. The Court below simply held
that the laws in question were not "uncon-
stitutional, per se." Arutunoff v. Okla-
homa State Election Board, 687 F.2d 1375
at 1379 (10th Cir. 1982). Such a ruling
is not in accord with either McLain v.
Meier, supra, at 1165 nor decisions of
this Court, e.g., Storer v. Brown, 415 U.S.
724, at 742 (1974), which did not use a

"per se" test, but rather looked at the experiences of other political party and independent candidates. Further, contrary to Respondents' brief in opposition (page 16), Oklahoma's petition deadline for new parties is not July 1, but rather 90 days after the notice of intent to form a recognized political party--which means not later than 90 days after February 28 or 29. Okla. Stat. Tit. 26, §1-108 (Supp. 1974).

CONCLUSION

Wherefore, having replied to Respondents' brief in opposition, Petitioners request that this Court grant a writ of certiorari to the Tenth Circuit Court below.

Respectfully submitted,

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